IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.MC.No. 3551 of 2007()

CC.104/2007 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER/ACCUSED:

T.K. ALIKUTTY, S/O. MUHAMMED HAJI
THONI KADAVATH HOUSE
ADAVANAD P.O. THIRUNAVAYA
MALAPPURAM DIST.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3551 of 2007

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Dated this the 27th day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance was taken and the case stood posted for appearance to 18.9.2007. On that day the petitioner appeared through counsel and the case was posted to the next date. On that date of posting the petitioner was laid up and could not appear. Thereupon a warrant of arrest has been issued against the petitioner rejecting the application to excuse his absence. The case now stands posted to 7.12.2007.

2. According to the petitioner he is absolutely innocent. His absence was not wilful. He is willing to surrender before the learned Magistrate and seek bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions

may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself. In the peculiar facts and

circumstances of this case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 7.12.2007, on or before that date the petitioner shall appear before the learned Magistrate and seek regular bail.

(R. BASANT)
Judge

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